

FEDERAL RULES OF
CRIMINAL PROCEDURE

With Forms

Report
of the
Advisory Committee on Rules of Criminal Procedure
Appointed by the
Supreme Court of the United States

June 1944

Advisory Committee on Rules of Criminal Procedure
Supreme Court of the United States
Washington, D. C.

July 12, 1944.

To the Members of the Advisory Committee:

There is enclosed herewith a copy of the text of the Rules as adopted at the last meeting of the Committee. The enclosed text also embodies a few minor verbal and stylistic alterations made subsequently to the meeting of the Committee by the Subcommittee on Style acting under authority conferred upon it by the full Committee.

The proposed Rules are now being printed for submission to the Supreme Court. If you find any errors that should be corrected, or any changes that should be made, kindly notify the undersigned as promptly as possible.

Sincerely yours,

Alexander Holtzoff
Secretary.

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FEDERAL RULES OF CRIMINAL PROCEDURE

I. SCOPE, PURPOSE AND CONSTRUCTION

- 1 Rule 1. Scope. These rules govern the procedure in
2 the courts of the United States and before United States
3 commissioners in all criminal proceedings, with the ex-
4 ceptions stated in Rule 57.

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1 Rule 2. Purpose and Construction. These rules are
2 intended to provide for the just determination of every crimi-
3 nal proceeding. They shall be construed to secure simplicity
4 in procedure, fairness in administration and the elimination of
5 unjustifiable expense and delay.

II. PRELIMINARY PROCEEDINGS

1 Rule 3. The Complaint. The complaint is a written
2 statement of the essential facts constituting the offense
3 charged. It shall be made upon oath before a commissioner
4 or other officer empowered to commit persons charged with
5 offenses against the United States.

upon oath and lodged ?

1 Rule 4. Warrant or Summons upon Complaint.

2 (a) Issuance. If it appears from the complaint that there
3 is probable cause to believe that an offense has been committed
4 and that the defendant has committed it, a warrant for the arrest
5 of the defendant shall issue to any officer authorized by law to
6 execute it. Upon the request of the attorney for the government
7 a summons instead of a warrant shall issue. More than one war-
8 rant or summons may issue on the same complaint. If a defendant
9 fails to appear in response to the summons, a warrant shall issue.

10 (b) Form.

11 (1) Warrant. The warrant shall be signed by the com-
12 missioner and shall contain the name of the defendant or,
13 if his name is unknown, any name or description by which he
14 can be identified with reasonable certainty. It shall de-
15 scribe the offense charged in the complaint. It shall com-
16 mand that the defendant be arrested and brought before the
17 nearest available commissioner.

18 (2) Summons. The summons shall be in the same form as
19 the warrant except that it shall summon the defendant to
20 appear before a commissioner at a stated time and place.

21 (c) Execution or Service; and Return.

22 (1) By Whom. The warrant shall be executed by a marshal
23 or by some other officer authorized by law. The summons may
24 be served by any person authorized to serve a summons in a
25 civil action.

26 (2) Territorial Limits. The warrant may be
27 executed or the summons may be served at any place
28 within the jurisdiction of the United States.

29 (3) Manner. The warrant shall be executed by the
30 arrest of the defendant. The officer need not have
31 the warrant in his possession at the time of the
32 arrest, but upon request he shall show the warrant to
33 the defendant as soon as possible. If the officer
34 does not have the warrant in his possession at the
35 time of the arrest, he shall then inform the defendant
36 of the offense charged and of the fact that a warrant
37 has been issued. The summons shall be served upon a
38 defendant by delivering a copy to him personally, or
39 by leaving it at his dwelling house or usual place of
40 abode with some person of suitable age and discretion
41 then residing therein or by mailing it to the defend-
42 ant's last known address.

43 (4) Return. The officer executing a warrant shall
44 make return thereof to the commissioner or other
45 officer before whom the defendant is brought pursuant
46 to Rule 5. At the request of the attorney for the
47 government any unexecuted warrant shall be returned
48 to the commissioner by whom it was issued and shall
49 be cancelled by him. On or before the return day the
50 person to whom a summons was delivered for service

51 shall make return thereof to the commissioner before
52 whom the summons is returnable. At the request of
53 the attorney for the government made at any time
54 while the complaint is pending, a warrant returned
55 unexecuted and not cancelled or a summons returned
56 unserved or a duplicate thereof may be delivered by
57 the commissioner to the marshal or other authorized
58 person for execution or service.

1 Rule 5. Proceedings before the Commissioner.

2 (a) Appearance before the Commissioner. An officer
3 making an arrest under a warrant issued upon a complaint or
4 any person making an arrest without a warrant shall take the
5 arrested person without unnecessary delay before the nearest
6 available commissioner or before any other nearby officer em-
7 powered to commit persons charged with offenses against the
8 laws of the United States. When a person arrested without a
9 warrant is brought before a commissioner or other officer, a
10 complaint shall be filed forthwith.

11 (b) Statement by the Commissioner. The commissioner shall
12 inform the defendant of the complaint against him, of his right
13 to retain counsel and of his right to have a preliminary exami-
14 nation. He shall also inform the defendant that he is not re-
15 quired to make a statement and that any statement made by him
16 may be used against him. The commissioner shall allow the
17 defendant reasonable time and opportunity to consult counsel
18 and shall admit the defendant to bail as provided in these rules.

19 (c) Preliminary Examination. The defendant shall not be
20 called upon to plead. If the defendant waives preliminary exami-
21 nation, the commissioner shall forthwith hold him to answer in
22 the district court. If the defendant does not waive examination,
23 the commissioner shall hear the evidence within a reasonable
24 time. The defendant may cross-examine witnesses against him
25 and may introduce evidence in his own behalf. If from the
26 evidence it appears to the commissioner that there is probable

27 cause to believe that an offense has been committed and that
28 the defendant has committed it, the commissioner shall forth-
29 with hold him to answer in the district court; otherwise the
30 commissioner shall discharge him. The commissioner shall
31 admit the defendant to bail as provided in these rules. After
32 concluding the proceeding the commissioner shall transmit
33 forthwith to the clerk of the district court all papers in the
34 proceeding and any bail taken by him.

III. INDICTMENT AND INFORMATION

1 Rule 6. The Grand Jury.

2 (a) Summoning Grand Juries. The court shall order one or
3 more grand juries to be summoned at such times as the public
4 interest requires. The grand jury shall consist of not less
5 than 16 nor more than 23 members. The court shall direct that
6 a sufficient number of legally qualified persons be summoned
7 to meet this requirement.

8 (b) Objections to Grand Jury and to Grand Jurors.

9 (1) Challenges. The attorney for the government or
10 a defendant who has been held to answer in the district
11 court may challenge the array of jurors on the ground that
12 the grand jury was not selected, drawn or summoned in ac-
13 cordance with law, and may challenge an individual juror
14 on the ground that the juror is not legally qualified.
15 Challenges shall be made before the administration of
16 the oath to the jurors and shall be tried by the court.

17 (2) Motion to Dismiss. A motion to dismiss the in-
18 dictment may be based on objections to the array or on
19 the lack of legal qualification of an individual juror,
20 if not previously determined upon challenge. An in-
21 dictment shall not be dismissed on the ground that one
22 or more members of the grand jury were not legally
23 qualified if it appears from the record kept pursuant to
24 subdivision (c) of this rule that 12 or more jurors,
25 after deducting the number not legally qualified,
26 concurred in finding the indictment.

Rule 6, Page 2

27 (c) Foreman and Deputy Foreman. The court shall appoint
28 one of the jurors to be foreman and another to be deputy
29 foreman. The foreman shall have power to administer oaths
30 and affirmations and shall sign all indictments. He or
31 another juror designated by him shall keep a record of the
32 number of jurors concurring in the finding of every indict-
33 ment and shall file the record with the clerk of the court,
34 but the record shall not be made public except on order of
35 the court. During the absence of the foreman, the deputy
36 foreman shall act as foreman.

37 (d) Who May Be Present. Attorneys for the government,
38 the witness under examination, interpreters when needed and,
39 for the purpose of taking the evidence, a stenographer may
40 be present while the grand jury is in session, but no person
41 other than the jurors may be present while the grand jury is
42 deliberating or voting.

43 (e) Secrecy of Proceedings and Disclosure. Disclosure
44 of matters occurring before the grand jury other than its
45 deliberations and the vote of any juror may be made to the
46 attorneys for the government for use in the performance of
47 their duties. Otherwise a juror, attorney, interpreter or
48 stenographer may disclose matters occurring before the
49 grand jury only when so directed by the court preliminarily
50 to or in connection with a judicial proceeding or when
51 permitted by the court at the request of the defendant upon

Rule 6, Page 3

52 a showing that grounds may exist for a motion to dismiss
53 the indictment because of matters occurring before the
54 grand jury. No obligation of secrecy may be imposed upon
55 any person except in accordance with this rule. The court
56 may direct that an indictment shall be kept secret until
57 the defendant is in custody or has given bail, and in that
58 event the clerk shall seal the indictment and no person
59 shall disclose the finding of the indictment except when
60 necessary for the issuance and execution of a warrant or
61 summons.

62 (f) Finding and Return of Indictment. An indictment
63 may be found only upon the concurrence of 12 or more jurors.
64 The indictment shall be returned by the grand jury to a
65 judge in open court. If the defendant has been held to
66 answer and 12 jurors do not concur in finding an indictment,
67 the foreman shall so report to the court in writing forthwith.

68 (g) Discharge and Excuse. A grand jury shall serve
69 until discharged by the court but no grand jury may serve
70 more than 18 months. The tenure and powers of a grand jury
71 are not affected by the beginning or expiration of a term
72 of court. At any time for cause shown the court may excuse
73 a juror either temporarily or permanently, and in the latter
74 event the court may impanel another person in place of the
75 juror excused.

1 Rule 7. The indictment and the Information.

2 (a) Use of Indictment or Information. An offense which

3 may be punished by death shall be prosecuted by indictment.

4 An offense which may be punished by imprisonment for a term
5 exceeding one year or at hard labor shall be prosecuted by
6 indictment or, if indictment is waived, it may be prosecuted
7 by information. Any other offense may be prosecuted by
8 indictment or by information. An information may be filed
9 without leave of court.

10 (b) Waiver of Indictment. An offense which may be punished

11 by imprisonment for a term exceeding one year or at hard
12 labor may be prosecuted by information if the defendant,
13 after he has been advised of the nature of the charge and
14 of his rights, waives in open court prosecution by indictment.

15 (c) Nature and Contents. The indictment or the informa-

16 tion shall be a plain, concise and definite written state-
17 ment of the essential facts constituting the offense charged.
18 It shall be signed by the attorney for the government. It
19 need not contain a formal commencement, a formal conclusion
20 or any other matter not necessary to such statement. Allega-
21 tions made in one count may be incorporated by reference
22 in another count. It may be alleged in a single count that
23 the means by which the defendant committed the offense are
24 unknown or that he committed it by one or more specified
25 means. The indictment or information shall state for each
26 count the official or customary citation of the statute,

Rule 7, Page 2

27 rule, regulation or other provision of law which the
28 defendant is alleged therein to have violated. Error
29 in the citation or its omission shall not be ground for
30 dismissal of the indictment or information or for reversal
31 of a conviction if the error or omission did not mis-
32 lead the defendant to his prejudice.

33 (d) Surplusage. The court on motion of the defendant
34 may strike surplusage from the indictment or information.

35 (e) Amendment of Information. The court may permit
36 an information to be amended at any time before verdict or
37 finding if no additional or different offense is charged
38 and if substantial rights of the defendant are not pre-
39 judiced.

40 (f) Bill of Particulars. The court for cause may
41 direct the filing of a bill of particulars. A motion for
42 a bill of particulars may be made only within ten days
43 after arraignment or at such other time before or after
44 arraignment as may be prescribed by rule or order. A bill
45 of particulars may be amended at any time subject to such
46 conditions as justice requires.

1 Rule 8. Joinder of Offenses and of Defendants.

2 (a) Joinder of Offenses. Two or more offenses may be
3 charged in the same indictment or information in a separate
4 count for each offense if the offenses charged, whether
5 felonies or misdemeanors or both, are of the same or similar
6 character or are based on the same act or transaction or on
7 two or more acts or transactions connected together or con-
8 stituting parts of a common scheme or plan.

9 (b) Joinder of Defendants. Two or more defendants may
10 be charged in the same indictment or information if they are
11 alleged to have participated in the same act or transaction
12 or in the same series of acts or transactions constituting
13 an offense or offenses. Such defendants may be charged in
14 one or more counts together or separately and all of the
15 defendants need not be charged in each count.

1 Rule 9. Warrant or Summons upon Indictment or Information.

2 (a) Issuance. Upon the request of the attorney for the
3 government the clerk shall issue a warrant for each defendant
4 named in the information, if it is supported by oath or in the
5 indictment. The clerk shall issue a summons instead of a
6 warrant upon the request of the attorney for the government or
7 by direction of the court. Upon like request or direction he
8 shall issue more than one warrant or summons for the same
9 defendant. He shall deliver the warrant or summons to the
10 marshal or other person authorized by law to execute or serve
11 it. If a defendant fails to appear in response to the summons,
12 a warrant shall issue.

13 (b) Form.

14 (1) Warrant. The form of the warrant shall be as
15 provided in Rule 4 (b) (1) except that it shall be signed
16 by the clerk, it shall describe the offense charged in the
17 indictment or information and it shall command that the
18 defendant be arrested and brought before the court. The
19 amount of bail may be fixed by the court and endorsed on
20 the warrant.

21 (2) Summons. The summons shall be in the same form as
22 the warrant except that it shall summon the defendant to
23 appear before the court at a stated time and place.

24 (c) Execution or Service; and Return.

25 (1) Execution or Service. The warrant shall be executed
26 or the summons served as provided in Rule 4 (c) (1), (2)
27 and (3). A summons to a corporation shall be served by

Rule 9, Page 2

28 delivering a copy to an officer or to a managing or
29 general agent or to any other agent authorized by
30 appointment or by law to receive service of process
31 and, if the agent is one authorized by statute to
32 receive service and the statute so requires, by also
33 mailing a copy to the corporation's last known address
34 within the district or at its principal place of busi-
35 ness elsewhere in the United States. The officer
36 executing the warrant shall bring the arrested person
37 promptly before the court or, for the purpose of admis-
38 sion to bail, before a commissioner.

39 (2) Return. The officer executing a warrant shall
40 make return thereof to the court. At the request of the
41 attorney for the government any unexecuted warrant shall
42 be returned and cancelled. On or before the return day
43 the person to whom a summons was delivered for service
44 shall make return thereof. At the request of the at-
45 torney for the government made at any time while the
46 indictment or information is pending, a warrant re-
47 turned unexecuted and not cancelled or a summons
48 returned unserved or a duplicate thereof may be delivered
49 by the clerk to the marshal or other authorized person
50 for execution or service.

IV. ARRAIGNMENT, AND PREPARATION FOR TRIAL

1 Rule 10. Arraignment. Arraignment shall be conducted
2 in open court and shall consist of reading the indictment or
3 information to the defendant or stating to him the substance
4 of the charge and calling on him to plead thereto. He shall be
5 advised that he is entitled to a copy of the indictment or
6 information and if he requests it a copy shall be given to him
7 before he is called upon to plead.

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1 Rule 11. Pleas. A defendant may plead not guilty,
2 guilty or, with the consent of the court, nolo contendere.
3 The court may refuse to accept a plea of guilty and shall
4 not accept the plea without first determining that the plea
5 is made voluntarily with understanding of the nature of the
6 charge. If a defendant refuses to plead or if the court re-
7 fuses to accept a plea of guilty or if a defendant corporation
8 fails to appear, the court shall enter a plea of not guilty.

1 Rule 12. Pleadings and Motions before Trial; Defenses
2 and Objections.

3 (a) Pleadings and Motions. Pleadings in criminal proceedings
4 shall be the indictment and the information, and the pleas of not
5 guilty, guilty and nolo contendere. All other pleas, and demurrers
6 and motions to quash are abolished, and defenses and objections
7 raised before trial which heretofore could have been raised by
8 one or more of them shall be raised only by motion to dismiss or
9 to grant appropriate relief, as provided in these rules.

10 (b) The Motion Raising Defenses and Objections.

11 (1) Defenses and Objections Which May Be Raised.

12 Any defense or objection which is capable of determination
13 without the trial of the general issue may be raised before
14 trial by motion.

15 (2) Defenses and Objections Which Must Be Raised.

16 Defenses and objections based on defects in the institution
17 of the prosecution or in the indictment or information other
18 than that it fails to show jurisdiction in the court or to
19 charge an offense may be raised only by motion before trial.
20 The motion shall include all such defenses and objections
21 then available to the defendant. Failure to present any
22 such defense or objection as herein provided constitutes a
23 waiver thereof, but the court for cause shown may grant
24 relief from the waiver. Lack of jurisdiction or the failure
25 of the indictment or information to charge an offense shall
26 be noticed by the court at any time during the pendency of

Rule 12, Page 2

27 the proceeding.

28 (3) Time of Making Motion. The motion shall be made
29 before the plea is entered, but the court may permit it
30 to be made within a reasonable time thereafter.

31 (4) Hearing on Motion. A motion before trial raising
32 defenses or objections shall be determined before trial
33 unless the court orders that it be deferred for determination
34 at the trial of the general issue. An issue of fact shall
35 be tried by a jury if a jury trial is required under the
36 Constitution or an act of Congress. All other issues of
37 fact shall be determined by the court with or without a
38 jury or on affidavits or in such other manner as the court
39 may direct.


40 (5) Effect of Determination. If a motion is determined
41 adversely to the defendant he shall be permitted to plead
42 if he had not previously pleaded. A plea previously en-
43 tered shall stand. If the court grants a motion based on
44 a defect in the institution of the prosecution or in the
45 indictment or information, it may also order that the de-
46 fendant be held in custody or that his bail be continued
47 for a specified time pending the filing of a new indictment
48 or information. Nothing in this rule shall be deemed to
49 affect the provisions of any act of Congress relating to
50 periods of limitations.

- 1 Rule 13. Trial Together of Indictments or Informations.
- 2 The court may order two or more indictments or informations
- 3 or both, to be tried together if the offenses, and the defendants
- 4 if there is more than one, could have been joined in a single
- 5 indictment or information. The procedure shall be the same as if
- 6 the prosecution were under such single indictment or information.

*an indictment
and an information*

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1 Rule 14. Relief from Prejudicial Joinder. If it appears
2 that a defendant or the government is prejudiced by a joinder
3 of offenses or of defendants in an indictment or information
4 or by such joinder for trial together, the court may order an
5 election or separate trials of counts, grant a severance of
6 defendants or provide whatever other relief justice requires.



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1 Rule 15. Pre-Trial Procedure. At any time after the
2 filing of the indictment or information the court may invite
3 the attorneys to appear before it for a conference, at which
4 the defendant shall have the right to be present, to consider

5 (1) The simplification of the issues;

6 (2) The possibility of obtaining admissions of fact
7 and of documents which will avoid unnecessary proof;

8 (3) The number of expert witnesses or character
9 witnesses or other witnesses who are to give testimony
10 of a cumulative nature;

11 (4) Such other matters as may aid in the disposition
12 of the proceeding.

13 The court shall make an order which recites the agreements
14 made by the parties as to any of the matters considered. All
15 orders entered at the pre-trial conference control the sub-
16 sequent course of the proceeding, unless modified at the trial
17 to prevent manifest injustice. This rule shall not be invoked
18 in case of any defendant who is not represented by counsel.

1 Rule 16. Notice of Alibi; Specifications of Time and Place.

2 If a defendant intends to offer evidence that at the time
3 alleged in the indictment or information he was at a place other
4 than the place where the alleged offense was committed, he may
5 make a motion to require the attorney for the government to
6 serve and file before trial a specification stating with greater
7 particularity than the indictment or information the time and
8 place at which the offense is alleged by the government to have
9 been committed. If the court grants the motion, it shall fix
10 the time within which the government's specification is to be
11 served. Upon service of the government's specification the
12 defendant shall serve and file a specification of the place where
13 he was at the time specified by the government if he intends to
14 offer evidence of alibi with respect to the time and place speci-
15 fied by the government. If the trial is not to begin within 5
16 days after service of the government's specification, the de-
17 fendant shall serve and file his specification not less than 3
18 days before trial; otherwise he shall serve and file his
19 specification at any time before trial. If a defendant fails
20 to make the motion or the specification but at the trial offers
21 evidence of alibi, the court may exclude the evidence unless
22 it finds that the failure was excusable or that the admission
23 of the evidence would be in the interest of justice. If the
24 court admits the evidence it may grant a request by the govern-
25 ment for a recess, for permission to reopen its case or for
26 other appropriate relief. At the trial each party is bound by its
27 specification but the court for cause shown may permit specifica-
28 tions to be amended. -24-

1 Rule 17. Depositions.

2 (a) When Taken. If it appears that a prospective wit-
3 ness may be unable to attend or prevented from attending a
4 trial or hearing, that his testimony is material and that
5 it is necessary to take his deposition in order to prevent
6 a failure of justice, the court at any time after the
7 filing of an indictment or information may upon notice to
8 the parties order that his testimony be taken by deposition
9 and that any designated books, papers, documents or tangible
10 objects, not privileged, be produced at the same time and
11 place. If a witness is committed for failure to give bail
12 to appear to testify at a trial or hearing, the court on
13 written motion of the witness and upon notice to the
14 parties may direct that his deposition be taken. After the
15 deposition has been subscribed the court may discharge the
16 witness.

17 (b) Notice of Taking. The party at whose instance a
18 deposition is to be taken shall give to every other party
19 reasonable written notice of the time and place for taking
20 the deposition. The notice shall state the name and address
21 of each person to be examined. On motion of a party upon
22 whom the notice is served, the court for cause shown may
23 extend or shorten the time.

24 (c) Defendant's Counsel and Payment of Expenses. If a
25 defendant is without counsel the court shall advise him of

Rule 17, Page 2

26 his right and assign counsel to represent him unless the
27 defendant elects to proceed without counsel or is able
28 to obtain counsel. If it appears that a defendant at whose
29 instance a deposition is to be taken cannot bear the ex-
30 pense thereof, the court may direct that the expenses of
31 travel and subsistence of the defendant's attorney for
32 attendance at the examination shall be paid by the govern-
33 ment. In that event the marshal shall make payment
34 accordingly.

35 (d) How Taken. A deposition shall be taken in the
36 manner provided in civil actions. If the deposition is
37 taken at the instance of a defendant, the court may at his
38 request direct that it be taken on written interrogatories
39 in the manner provided in civil actions.

40 (e) At Instance of the Government or of a Witness.
41 The following additional requirements shall
42 apply if the deposition is taken at the instance of the
43 government or of a witness. The officer having custody of
44 a defendant shall be notified of the time and place set for
45 the examination, and shall produce him at the examination
46 and keep him in the presence of the witness during the
47 examination. A defendant not in custody shall be given
48 notice and shall have the right to be present at the
49 examination. The government shall pay in advance to the
50 defendant's attorney and to a defendant not in custody

51 expenses of travel and subsistence for attendance at the
52 examination.

53 (f) Use. At the trial or upon any hearing, a part or
54 all of a deposition, so far as otherwise admissible under
55 the rules of evidence, may be used if it appears: That the
56 witness is dead; or that the witness is out of the United
57 States, unless it appears that the absence of the witness
58 was procured by the party offering the deposition; or that
59 the witness is unable to attend or testify because of
60 sickness or infirmity; or that the party offering the
61 deposition has been unable to procure the attendance of the
62 witness by subpoena. Any deposition may also be used by any
63 party for the purpose of contradicting or impeaching the
64 testimony of the deponent as a witness. If only a part of a
65 deposition is offered in evidence by a party, an adverse
66 party may require him to offer all of it which is relevant
67 to the part offered and any party may offer other parts.

68 (g) Objections to Admissibility. Objections to re-
69 ceiving in evidence a deposition or part thereof may be
70 made as provided in civil actions.

1 Rule 18. Discovery and Inspection. Upon motion of a
2 defendant at any time after the filing of the indictment or
3 information, the court may order the attorney for the govern-
4 ment to permit the defendant to inspect and copy or photograph
5 designated books, papers, documents or tangible objects, ob-
6 tained from or belonging to the defendant or obtained from
7 others by seizure or by process, upon a showing that the items
8 sought may be material to the preparation of his defense and
9 that the request is reasonable. The order shall specify the
10 time, place and manner of making the inspection and of taking
11 the copies or photographs and may prescribe such terms and
12 conditions as are just.

1 Rule 19. Subpoena.

2 (a) For Attendance of Witnesses; Form; Issuance.

3 A subpoena shall be issued by the clerk under the seal of
4 the court. It shall state the name of the court and the
5 title, if any, of the proceeding, and shall command each
6 person to whom it is directed to attend and give testimony at
7 the time and place specified therein. The clerk shall issue
8 a subpoena, signed and sealed but otherwise in blank to a
9 party requesting it, who shall fill in the blanks before it is
10 served. A subpoena shall be issued by a commissioner in a
11 proceeding before him, but it need not be under the seal
12 of the court.

13 (b) Indigent Defendants. The court or a judge thereof
14 may order at any time that a subpoena be issued upon motion or
15 request of an indigent defendant. The motion or request shall
16 be supported by affidavit in which the defendant shall state
17 the name and address of each witness and the testimony which
18 he is expected by the defendant to give if subpoenaed, and
19 shall show that the evidence of the witness is material to
20 the defense, that the defendant cannot safely go to trial
21 without the witness and that the defendant does not have
22 sufficient means and is actually unable to pay the fees of the
23 witness. If the court or judge orders the subpoena to be
24 issued the costs incurred by the process and the fees of the
25 witness so subpoenaed shall be paid in the same manner in
26 which similar costs and fees are paid in case of a witness

27 subpoenaed in behalf of the government.

28 (c) For Production of Documentary Evidence and of Objects.

29 A subpoena may also command the person to whom it is directed to
30 produce the books, papers, documents or other objects designated
31 therein. The court on motion made promptly may quash or modify
32 the subpoena if compliance would be unreasonable or oppressive.
33 The court may direct that books, papers, documents or objects
34 designated in the subpoena be produced before the court at a
35 time prior to the trial or prior to the time when they are to
36 be offered in evidence and may upon their production permit the
37 books, papers, documents or objects or portions thereof to be
38 inspected by the parties and their attorneys.

39 (d) Service. A subpoena may be served by the marshal, by
40 his deputy, or by any other person who is not a party and who
41 is not less than 18 years of age. Service of a subpoena shall
42 be made by delivering a copy thereof to the person named and by
43 tendering to him the fee for ① day's attendance and the mileage
44 allowed by law. When the subpoena is issued on behalf of the
45 government or of an indigent defendant fees and mileage
46 need not be tendered.

47 (e) For Taking Deposition; Place of Examination.

48 (1) An order to take a deposition authorizes the
49 issuance by the clerk of the court for the district in
50 which the deposition is to be taken of subpoenas for the
51 persons named or described therein.

Rule 19, Page 3

52 (2) A resident of the district in which the deposi-
53 tion is to be taken may be required to attend an examination
54 only in the county wherein he resides or is employed or
55 transacts his business in person. A nonresident of the
56 district may be required to attend only in the county ... *and in the*
57 where he is served with a subpoena or within 40 miles from
58 the place of service or (at) such other place as is fixed by
59 the court.

60 (f) For Hearing or Trial.

61 (1) A subpoena requiring the attendance of a witness
62 at a hearing or trial may be served at any place within
63 the United States.

64 (2) A subpoena directed to a witness in a foreign
65 country shall issue under the circumstances and in the
66 manner and be served as provided in the Act of July 3,
67 1926, c. 762, ss 2, 3, 4, 44 Stat. 835-836; 28 U. S. C.
68 ss 712, 713, 714.

69 (g) Contempt. Failure by any person without adequate
70 excuse to obey a subpoena served upon him may be deemed a con-
71 tempt of the court from which the subpoena issued or of the
72 court for the district in which it issued if it was issued by
73 a commissioner.

V. VENUE

1 Rule 20. District and Division. Except as other-
2 wise permitted by statute or by these rules, the
3 prosecution shall be had in a district in which the
4 offense was committed, but if the district consists of
5 two or more divisions the trial shall be had in a
6 division in which the offense was committed.

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1 Rule 21. Transfer within the District. In a dis-
2 trict containing more than one division the ar-
3 raignment may be had, a plea entered, the trial
4 conducted or sentence imposed, if the defendant
5 consents, in any division and at any time.

1 Rule 22. Transfer from the District for Plea and Sentence.
2 A defendant arrested in a district other than that in which
3 the indictment or information is pending against him may state
4 in writing, after receiving a copy of the indictment or in-
5 formation, that he wishes to plead guilty or nolo contendere,
6 to waive trial in the district in which the indictment or
7 information is pending, and to consent to disposition of the
8 case in the district in which he was arrested, subject to the
9 approval of the United States attorney for each district. Upon
10 receipt of the defendant's statement and of the written ap-
11 proval of the United States attorneys, the clerk of the court
12 in which the indictment or information is pending shall trans-
13 mit the papers in the proceeding or certified copies thereof to
14 the clerk of the court for the district in which the defendant
15 is held and the prosecution shall continue in that district.
16 If after the proceeding has been transferred the defendant
17 pleads not guilty, the clerk shall return the papers to the
18 court in which the prosecution was commenced and the pro-
19 ceeding shall be restored to the docket of that court. The
20 defendant's statement shall not be used against him unless
21 he was represented by counsel when it was made.

1 Rule 23. Transfer from the District or Division for Trial.

2 (a) For Prejudice in the District or Division. The court
3 upon motion of the defendant shall transfer the proceeding as to
4 him to another district or division if the court is satisfied
5 that there exists in the district or division where the prose-
6 cution is pending so great a prejudice against the defendant
7 that he cannot obtain a fair and impartial trial in that dis-
8 trict or division.

9 (b) Offense Committed in Two or More Districts or Divisions.

10 The court upon motion of the defendant shall transfer the proceed-
11 ing as to him to another district or division, if it appears from
12 the indictment or information or from a bill of particulars that
13 the offense was committed in more than one district or division
14 and if the court is satisfied that in the interest of justice
15 the proceeding should be transferred to another district or
16 division in which the commission of the offense is charged.

17 (c) Proceedings on Transfer. When a transfer is ordered
18 the clerk shall transmit to the clerk of the court to which the
19 proceeding is transferred all papers in the proceeding or
20 duplicates thereof and any bail taken, and the prosecution
21 shall continue in that district or division.

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- 1 Rule 24. Time of Motion to Transfer. A motion to transfer
- 2 under these rules may be made at or before arraignment or at
- 3 such other time as the court or these rules may prescribe.

VI. TRIAL

1 Rule 25. Trial by Jury or by the Court.

2 (a) Trial by Jury. Cases required to be tried by jury
3 shall be so tried unless the defendant waives a jury trial in
4 writing with the approval of the court and the consent of the
5 government.

6 (b) Jury of Less Than Twelve. Juries shall be of 12 but
7 at any time before verdict the parties may stipulate in writing
8 with the approval of the court that the jury shall consist of
9 any number less than 12.

10 (c) Trial Without a Jury. In a case tried without a jury
11 the court shall make a general finding and may in addition find
12 the facts specially.

1 Rule 26. Trial Jurors.

2 (a) Examination. The court may permit the defendant or
3 his attorney and the attorney for the government to conduct
4 the examination of prospective jurors or may itself conduct
5 the examination. In the latter event the court shall permit
6 the defendant or his attorney and the attorney for the govern-
7 ment to supplement the examination by such further inquiry as
8 it deems proper or shall itself submit to the prospective
9 jurors such additional questions by the parties or their
10 attorneys as it deems proper.

11 (b) Peremptory Challenges. If the offense charged is
12 punishable by death, each side is entitled to 20 peremptory
13 challenges. If the offense charged is punishable by im-
14 prisonment for more than one year, the government is en-
15 titled to 6 peremptory challenges and the defendant or
16 defendants jointly to 10 peremptory challenges. If the
17 offense charged is punishable by imprisonment for not more
18 than one year or by fine or both, each side is entitled to 3
19 peremptory challenges. If there is more than one defendant,
20 the court may allow the defendants additional peremptory
21 challenges and permit them to be exercised separately or
22 jointly.

23 (c) Alternate Jurors. The court may direct that not
24 more than 4 jurors in addition to the regular jury be called
25 and compelled to sit as alternate jurors. Alternate jurors

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26 in the order in which they are called shall replace jurors
27 who, prior to the time the jury retires to consider its
28 verdict, become unable or disqualified to perform their duties.
29 Alternate jurors shall be drawn in the same manner, shall have
30 the same qualifications, shall be subject to the same examina-
31 tion and challenges, shall take the same oath and shall have
32 the same functions, powers, facilities and privileges as the
33 regular jurors. An alternate juror who does not replace a
34 regular juror shall be discharged after the jury retires to
35 consider its verdict. Each side is entitled to 1 peremptory
36 challenge in addition to those otherwise allowed by law if
37 1 or 2 alternate jurors are to be impanelled, and 2 peremptory
38 challenges if 3 or 4 alternate jurors are to be impanelled.
39 The additional peremptory challenges may be used against an
40 alternate juror only, and the other peremptory challenges
41 allowed by these rules may not be used against an alternate
42 juror.

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1 Rule 27. Judge; Disability. If by reason of ab-
2 sence from the district, death, sickness or other
3 disability the judge before whom the defendant
4 has been tried is unable to perform the duties to
5 be performed by the court after a verdict or
6 finding of guilt, any other judge regularly sitting
7 in or assigned to the court may perform those
8 duties; but if such other judge is satisfied that he
9 cannot perform those duties because he did not
10 preside at the trial or for any other reason, he
11 may in his discretion grant a new trial.

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1 Rule 28. Evidence. In all trials the testimony of
2 witnesses shall be taken orally in open court, un-
3 less otherwise provided by an act of Congress or
4 by these rules. The admissibility of evidence and
5 the competency and privileges of witnesses shall
6 be governed, except when an act of Congress or
7 these rules otherwise provide, by the principles
8 of the common law as they may be interpreted by
9 the courts of the United States in the light of
10 reason and experience.

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- 1 Rule 29. Proof of Official Record. An official
2 record or an entry therein or the lack of such a
3 record or entry may be proved in the same man-
4 ner as in civil actions.

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1 Rule 30. Expert Witnesses. The court may
2 order the defendant or the government or both to
3 show cause why expert witnesses should not be
4 appointed, and may request the parties to submit
5 nominations. The court may appoint any expert
6 witnesses agreed upon by the parties, and may
7 appoint witnesses of its own selection. An ex-
8 pert witness shall not be appointed by the court
9 unless he consents to act. A witness so appointed
10 shall be informed of his duties by the court at a
11 conference in which the parties shall have op-
12 portunity to participate. A witness so appointed
13 shall advise the parties of his findings, if any,
14 and may thereafter be called to testify by the
15 court or by any party. He shall be subject to
16 cross-examination by each party. The court may
17 determine the reasonable compensation of such a
18 witness and direct its payment out of such funds
19 as may be provided by law. The parties also
20 may call expert witnesses of their own selection.

1 Rule 31. Motion for Acquittal.

2 (a) Motion for Judgment of Acquittal. Motions for
3 directed verdict are abolished and motions for judgment of
4 acquittal shall be used in their place. The court on motion of
5 a defendant or of its own motion shall order the entry of judg-
6 ment of acquittal of one or more offenses charged in the
7 indictment or information after the evidence on either side is
8 closed if the evidence is insufficient to sustain a conviction
9 of such offense or offenses. If a defendant's motion for judg-
10 ment of acquittal at the close of the evidence offered by the
11 government is not granted, the defendant may offer evidence
12 without having reserved the right.

13 (b) Reservation of Decision on Motion. If a motion for
14 judgment of acquittal is made at the close of all the evidence,
15 the court may reserve decision on the motion, submit the case
16 to the jury and decide the motion either before the jury returns
17 a verdict or after it returns a verdict of guilty or is discharged
18 without having returned a verdict. If the motion is denied and
19 the case is submitted to the jury, the motion may be renewed with-
20 in 5 days after the jury is discharged and may include in the
21 alternative a motion for a new trial. If a verdict of guilty is
22 returned the court may on such motion set aside the verdict and
23 order a new trial or enter judgment of acquittal. If no verdict
24 is returned the court may order a new trial or enter judgment
25 of acquittal.

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1 Rule 32. Instructions. At the close of the evi-
2 dence or at such earlier time during the trial as
3 the court reasonably directs, any party may file
4 written requests that the court instruct the jury on
5 the law as set forth in the requests. At the same
6 time copies of such requests shall be furnished to
7 adverse parties. The court shall inform counsel
8 of its proposed action upon the requests prior to
9 their arguments to the jury, but the court shall
10 instruct the jury after the arguments are com-
11 pleted. No party may assign as error any portion
12 of the charge or omission therefrom unless he ob-
13 jects thereto before the jury retires to consider its
14 verdict, stating distinctly the matter to which he
15 objects and the grounds of his objection. Oppor-
16 tunity shall be given to make the objection out of
17 the hearing of the jury.

*See Judge
Coleman's
proposal*

1 Rule 33. Verdict.

2 (a) Return. The verdict shall be unanimous. It shall
3 be returned by the jury to the judge in open court.

4 (b) Several Defendants. If there are two or more defend-
5 ants, the jury at any time during its deliberations may return
6 a verdict or verdicts with respect to a defendant or defendants
7 as to whom it has agreed; if the jury cannot agree with respect
8 to all, the defendant or defendants as to whom it does not
9 agree may be tried again.

10 (c) Conviction of Less Offense. The defendant may be
11 found guilty of an offense necessarily included in the offense
12 charged or of an attempt to commit either the offense charged
13 or an offense necessarily included therein if ~~the~~ attempt is *such*
14 an offense.

15 (d) Poll of Jury. When a verdict is returned and before
16 it is recorded the jury shall be polled at the request of any
17 party or upon the court's own motion. If upon the poll there
18 is not unanimous concurrence, the jury may be directed to re-
19 tire for further deliberations or may be discharged.

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VII. JUDGMENT

1 Rule 34. Sentence and Judgment.

2 (a) Sentence. Sentence shall be imposed without unreason-
3 able delay. Pending sentence the court may commit the defend-
4 ant or continue or alter the bail. Before imposing sentence
5 the court shall afford the defendant an opportunity to make
6 a statement in his own behalf and to present any information
7 in mitigation of punishment.

8 (b) Judgment. A judgment of conviction shall set forth
9 the plea, the verdict or finding, and the adjudication and
10 sentence. If the defendant is found not guilty or for any
11 other reason is entitled to be discharged, judgment shall be
12 entered accordingly. The judgment shall be signed by the
13 judge and entered by the clerk.

14 (c) Presentence Investigation.

15 (1) When Made. The probation service of the court
16 shall make a presentence investigation and report to the
17 court before the imposition of sentence or the granting
18 of probation unless the court otherwise directs. The
19 report shall not be submitted to the court or its contents
20 disclosed to anyone unless the defendant has pleaded
21 guilty or has been found guilty.

22 (2) Report. The report of the presentence investiga-
23 ~~tion shall contain any prior criminal record of the defendant.~~
24 and such information about his characteristics, his financial
25 condition and the circumstances affecting his behavior as

Rule 34, Page 2

26 may be helpful in imposing sentence or in granting
27 probation or in the correctional treatment of the defend-
28 ant, and such other information as may be required by
29 the court. After determination of the question of guilt
30 the report shall be available, upon such conditions as
31 the court may impose, to the attorneys for the parties and
32 to such other persons or agencies having a legitimate in-
33 terest therein as the court may designate.

34 (d) Withdrawal of Plea of Guilty. A motion to withdraw a
35 plea of guilty or of nolo contendere may be made only before
36 sentence is imposed or imposition of sentence is suspended; but
37 to correct manifest injustice the court after sentence may set
38 aside the judgment of conviction and permit the defendant to
39 withdraw his plea.

40 (e) Probation. After conviction of an offense not punish-
41 able by death or by life imprisonment, the defendant may be
42 placed on probation as provided by law.

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1 Rule 35. New Trial. The court may grant a new trial
2 to a defendant if required in the interest of justice. If
3 trial was by the court without a jury the court may vacate
4 the judgment if entered, take additional testimony and direct
5 the entry of a new judgment. A motion for a new trial based
6 on the ground of newly discovered evidence or on the ground
7 that the defendant has been deprived of a constitutional
8 right may be made at any time before or after final judgment,
9 but if an appeal is pending the court may grant the motion
10 only on remand of the case. A motion for a new trial based
11 on any other grounds shall be made within 5 days after
12 verdict or finding of guilty or within such further time
13 as the court may fix during the 5-day period.

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1 Rule 36. Arrest of Judgment. The court shall arrest
2 judgment if the indictment or information does not charge
3 an offense or if the court was without jurisdiction of the
4 offense charged. The motion in arrest of judgment shall be
5 made within 5 days after determination of guilt or within
6 such further time as the court may fix during the 5-day
7 period.

1 Rule 37. Correction or Reduction of Sentence.

2 The court may correct an illegal sentence at any time.

3 The court may reduce a sentence within 60 days after the
4 sentence is imposed, or within 60 days after receipt by the
5 court of a mandate issued upon affirmance of the judgment
6 or dismissal of the appeal, or within 60 days after receipt
7 of an order of the Supreme Court denying an application for
8 a writ of certiorari.

particular?

*How does
dict Ct re-
ceive notice
of denial
of cert.?*

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- 1 Rule 38. Clerical Mistakes. Clerical mistakes
2 in judgments, orders, or other parts of the record and
3 errors in the record arising from oversight or omission,
4 may be corrected by the court at any time and after
5 such notice, if any, as the court orders.

VIII. APPEAL

1 Rule 39. Taking Appeal; and Petition for Writ of
2 Certiorari.

3 (a) Taking Appeal.

4 (1) Notice of Appeal. An appeal permitted by law
5 from a district court to the Supreme Court or to a circuit
6 court of appeals is taken by filing with the clerk of the
7 district court a notice of appeal in duplicate. Petitions
8 for allowance of appeal, citations, and assignments of error
9 in cases governed by these rules are abolished. The notice
10 of appeal shall set forth the title of the case, the name
11 and address of the appellant and of appellant's attorney,
12 a brief statement of the offense, a concise statement of
13 the judgment or order, giving its date and any sentence
14 imposed, the place of confinement if the defendant is in
15 custody, and a statement that the appellant appeals from
16 the judgment or order. If the appeal is directly to the
17 Supreme Court, the notice shall be accompanied by a
18 jurisdictional statement as prescribed by the rules of
19 the Supreme Court. The notice of appeal shall be signed
20 by the appellant or appellant's attorney, or by the
21 clerk if the notice is prepared by the clerk as provided
22 in paragraph (2) of this subdivision. The duplicate
23 notice of appeal and a statement of the docket entries
24 shall be forwarded immediately by the clerk of the
25 district court to the clerk of the appellate court.

26 Notification of the filing of the notice of appeal
27 shall be given by the clerk by mailing copies thereof
28 to adverse parties, but his failure so to do does not
29 affect the validity of the appeal.

30 (2) Time for Taking Appeal. An appeal by a defend-
31 ant may be taken within 10 days after entry of the
32 judgment or order appealed from, but if a motion for a
33 new trial or in arrest of judgment has been made within
34 the 10-day period an appeal from a judgment of conviction
35 may be taken within 10 days after entry of the order
36 denying the motion. When a court after trial imposes
37 sentence upon a defendant not represented by counsel,
38 the defendant shall be advised of his right to appeal
39 and if he so requests, the clerk shall prepare and file
40 forthwith on behalf of the defendant a notice of appeal.
41 An appeal by the government may be taken within 30 days
42 after entry of the judgment or order appealed from.

43 (b) Petition for Review on Writ of Certiorari.

44 (1) Petition. Petition to the Supreme Court for writ
45 of certiorari shall be made as prescribed in its rules.

46 (2) Time of Making Petition. Petition for writ of
47 certiorari may be made within 30 days after entry of
48 the judgment or within such further time not exceeding
49 30 days as the Court or a justice thereof for cause shown
50 may fix within the 30-day period following judgment.

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51 If the judgment was entered in a district court
52 in Alaska, Hawaii, Puerto Rico, Canal Zone or
53 Virgin Islands, the petition shall be deemed in time
54 if mailed under a postmark dated within such 30-day
55 period.

1 Rule 40. Stay of Execution, and Relief Pending Review.

2 (a) Stay of Execution.

3 (1) Death. A sentence of death shall be stayed if an
4 appeal is taken.

5 (2) Imprisonment. A sentence of imprisonment shall
6 be stayed if an appeal is taken and the defendant elects
7 not to commence service of the sentence or is admitted
8 to bail.

9 (3) Fine. A sentence to pay a fine or a fine and
10 costs, if an appeal is taken, may be stayed by the
11 district court or by the circuit court of appeals upon
12 such terms as the court deems proper. The court may
13 require the defendant pending appeal to deposit the
14 whole or any part of the fine and costs in the registry
15 of the district court, or to give bond for the payment
16 thereof, or to submit to an examination of assets, and
17 it may make any appropriate order to restrain the de-
18 fendant from dissipating his assets.

19 (4) Probation. An order placing the defendant on
20 probation shall be stayed if an appeal is taken.

21 (b) Bail. Admission to bail upon appeal or certiorari
22 shall be as provided in these rules.

23 (c) Application for Relief Pending Review. If applica-
24 tion is made to a circuit court of appeals or to a circuit
25 judge or to a justice of the Supreme Court for bail pending

Rule 40, Page 2

26 appeal or for an extension of time for docketing the record
27 on appeal or for any other relief which might have been
28 granted by the district court, the application shall be
29 upon notice and shall show that application to the court
30 below or a judge thereof is not practicable or that ap-
31 plication has been made and denied, with the reasons given
32 for the denial, or that the action on the application did
33 not afford the relief to which the applicant considers
34 himself to be entitled.

1 Rule 41. Supervision of Appeal.

2 (a) Supervision in Appellate Court. The su-
3 pervision and control of the proceedings on appeal
4 shall be in the appellate court from the time the
5 notice of appeal is filed with its clerk, except as
6 otherwise provided in these rules. The appellate
7 court may at any time entertain a motion to dismiss
8 the appeal, or for directions to the district court, or
9 to modify or vacate any order made by the district
10 court or by any judge in relation to the prosecution
11 of the appeal, including any order fixing or denying
12 bail.

13 (b) The Record on Appeal.

14 (1) Preparation and Form. The rules and
15 practice governing the preparation and form
16 of the record on appeal in civil actions shall
17 apply to the record on appeal in all criminal
18 proceedings, except as otherwise provided in
19 these rules.

20 (2) Use of Typewritten Record. The circuit
21 court of appeals may dispense with the print-
22 ing of the record on appeal and review the pro-
23 ceedings on the typewritten record.

24 (c) Docketing of Appeal and Record on Ap-
25 peal. The record on appeal shall be filed with the
26 appellate court and the proceeding there docketed

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27 within 40 days from the date the notice of appeal is
28 filed in the district court, but if more than one
29 appeal is taken from the same judgment to the same
30 appellate court, the district court may prescribe
31 the time for filing and docketing, which in no event
32 shall be less than 40 days from the date the first
33 notice of appeal is filed. In all cases the district
34 court or the appellate court or, if the appellate
35 court is not in session, any judge thereof may for
36 cause shown extend the time for filing and docketing.

37 (d) Setting the Appeal for Argument. Unless
38 good cause is shown for an earlier hearing, the ap-
39 pellate court shall set the appeal for argument on
40 a date not less than 30 days after the filing in that
41 court of the record on appeal and as soon after the
42 expiration of that period as the state of the calendar
43 will permit. Preference shall be given to appeals
44 in criminal cases over appeals in civil cases.

IX. SUPPLEMENTARY AND SPECIAL
PROCEEDINGS

11 Rule 42. Commitment to Another District;
12 Removal.
13 (a) Arrest in Nearby District. If a person is
14 arrested on a warrant issued upon a complaint in
15 a district other than the district of the arrest but
16 in the same state, or on a warrant issued upon a
17 complaint in another state but at a place less than
18 100 miles from the place of arrest, or without a
19 warrant for an offense committed in another dis-
20 trict in the same state or in another state but at a
21 place less than 100 miles from the place of the ar-
22 rest, he shall be taken before the nearest available
23 commissioner or other nearby officer described in
24 Rule 5 (a); preliminary proceedings shall be con-
25 ducted in accordance with Rule 5 (b) and (c); and
26 if held to answer, he shall be held to answer to the
27 district court for the district in which the prose-
28 cution is pending, or if the arrest was without a
29 warrant, for the district in which the offense was
30 committed. If such an arrest is made on a war-
31 rant issued on an indictment or information, the
32 person arrested shall be taken before the district
33 court in which the prosecution is pending or, for

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24 the purpose of admission to bail, before a commissioner
25 in the district of the arrest in accordance with provisions
26 of Rule 9 (c) (1).

27 (b) Arrest in Distant District.

28 (1) Appearance before Commissioner or Judge.

29 If a person is arrested upon a warrant issued in
30 another state at a place 100 miles or more from the
31 place of arrest, or without a warrant for an offense
32 committed in another state at a place 100 miles or
33 more from the place of arrest, he shall be taken
34 without unnecessary delay before the nearest
35 available commissioner or a nearby judge of the
36 United States in the district in which the arrest
37 was made.

38 (2) Statement by Commissioner or Judge.

39 The commissioner or judge shall inform the defendant
40 of the charge against him, of his right to retain
41 counsel and of his right to have a hearing or to
42 waive a hearing by signing a waiver before the com-
43 missioner or judge. The commissioner or judge shall
44 also inform the defendant that he is not required to
45 make a statement and that any statement made by him
46 may be used against him, shall allow him reasonable
47 opportunity to consult counsel and shall admit him

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48 to bail as provided in these rules.

49 (3) Hearing; Warrant of Removal or Discharge.

50 The defendant shall not be called upon to plead. If
51 the defendant waives hearing, the judge shall issue a
52 warrant of removal to the district where the prosecution
53 is pending. If the defendant does not waive hearing, the
54 commissioner or judge shall hear the evidence. If the
55 commissioner hears the evidence he shall report his
56 findings and recommendations to the judge. At the
57 hearing the defendant may cross-examine witnesses against
58 him and may introduce evidence in his own behalf. If it
59 appears from the commissioner's report or from the evi-
60 dence adduced before the judge that sufficient ground has
61 been shown for ordering the removal of the defendant, the
62 judge shall issue a warrant of removal to the district
63 where the prosecution is pending. Otherwise he shall
64 discharge the defendant. If the prosecution is by in-
65 dictment, a warrant of removal shall issue upon production
66 of a certified copy of the indictment and upon proof that
67 the defendant is the person named in the indictment. If
68 the prosecution is by information or complaint, a warrant
69 of removal shall issue upon the production of a certified
70 copy of the information or complaint and upon proof that
71 there is probable cause to believe that the defendant is
72 guilty of the offense charged. If a warrant of removal

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73 is issued, the defendant shall be admitted to bail
74 for appearance in the district in which the prosecution
75 is pending in accordance with Rule 48. After a defend-
76 ant is held for removal or is discharged, the papers in
77 the proceeding and any bail taken shall be transmitted
78 to the clerk of the district court in which the prose-
79 cution is pending.

80 (4) Hearing and Removal on Arrest without a Warrant.

81 If a person is arrested without a warrant, the hearing
82 may be continued for a reasonable time, upon a showing
83 of probable cause to believe that he is guilty of the
84 offense charged; but he may not be removed as herein
85 provided unless a warrant issued in the district in
86 which the offense was committed is presented.

1 Rule 43. Search and Seizure.

2 (a) Authority to Issue Warrant. A search warrant authorized
3 by this rule may be issued by a judge of the United States or of
4 a state or territorial court of record or by a United States
5 commissioner within the district wherein the property sought
6 is located.

7 (b) Grounds for Issuance. A warrant may be issued under this
8 rule to search for and seize any property.

9 (1) Constituting the fruits of a violation of a law
10 ^{of the U} of the United States; or

11 (2) Designed or intended for use or which is or has been
12 used as the means of committing a criminal offense; or

13 (3) Possessed, controlled, or designed or intended for use
14 or which is or has been used in violation of the Act of June
15 15, 1917, c. 30, title VIII, s 4, 40 Stat. 226, and title XI, s
16 22, 40 Stat. 230, as amended by the Act of March 28, 1940, c.
17 72, s 8, 54 Stat. 80; 18 U. S. C. s 98.

18 (c) Issuance and Contents. A warrant shall issue only
19 on affidavit sworn to before the judge or commissioner and estab-
20 lishing the grounds for issuing the warrant. If the judge or com-
21 missioner is satisfied that grounds for the application exist
22 or that there is probable cause to believe that they exist,
23 he shall issue a warrant identifying the property and naming
24 or describing the person or place to be searched. The

Rule 43, Page 2

25 warrant shall be directed to a civil officer of the United
26 States authorized to enforce or assist in enforcing any law
27 thereof or to a person so authorized by the President of
28 the United States. It shall state the grounds or probable
29 cause for its issuance and the names of the persons whose
30 affidavits have been taken in support thereof. It shall
31 command the officer to search forthwith the person or place
32 named for the property specified. The warrant shall direct
33 that it be served in the daytime, but if the affidavits are
34 positive that the property is on the person or in the place
35 to be searched, the warrant may direct that it be served at
36 any time. It shall designate the district judge or the com-
37 missioner to whom it shall be returned.

38 (1) Execution and Return with Inventory. The warrant
39 may be executed and returned only within 10 days after its
40 date. The officer taking property under the warrant shall
41 give to the person from whom or from whose premises the
42 property was taken a copy of the warrant and a receipt for
43 the property taken or shall leave the copy and receipt at
44 the place from which the property was taken. The return shall
45 be made promptly and shall be accompanied by a written inven-
46 tory of any property taken. The inventory shall be made in the
47 presence of the applicant for the warrant and the person from
48 whose possession or premises the property was taken, if they

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49 are present, or in the presence of at least one credible person
50 other than the applicant for the warrant or the person from
51 whose possession or premises the property was taken, and shall
52 be verified by the officer. The judge or commissioner shall
53 upon request deliver a copy of the inventory to the person
54 from whom or from whose premises the property was taken and
55 to the applicant for the warrant.

56 (e) Motion for Return of Property and to Suppress Evidence.

57 A person aggrieved by an unlawful search and seizure may move
58 the District Court for the District in which the property was
59 seized for the return of the property and to suppress for use
60 as evidence anything so obtained on the ground that (1) the
61 property was illegally seized without warrant, or (2) the
62 warrant is insufficient on its face, or (3) the property
63 seized is not that described in the warrant, or (4) there
64 was not probable cause for believing the existence of the
65 grounds on which the warrant was issued, or (5) the warrant
66 was illegally executed. The judge shall receive evidence
67 on any issue of fact necessary to the decision of the motion.
68 If the motion is granted the property shall be restored unless
69 otherwise subject to lawful detention and it shall not be
70 admissible in evidence at any hearing or trial. The motion to
71 suppress evidence may also be made in the District where the
72 trial is to be had. The motion shall be made before trial

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73 or hearing unless opportunity therefor did not exist or
74 the defendant was not aware of the grounds for the motion,
75 but the court in its discretion may entertain the motion at
76 the trial or hearing.

77 (f) Return of Papers to Clerk. The judge or commissioner
78 who has issued a search warrant shall attach to the warrant
79 a copy of the return, inventory and all other papers in con-
80 nection therewith and shall file them with the clerk of the
81 District Court for the District in which the property was
82 seized.

83 (g) Scope and Definition. This rule supersedes the Act
84 of June 15, 1917, c. 30, title XI, ss 1-6, 10, 11, 12-16, 40
85 Stat. 228, 229, 18 U. S. C. ss 611-616, 620, 621, 623-626, and
86 any other provision of chapter 30 of that Act inconsistent
87 with this rule. It does not modify any other act, incon-
88 sistent with this rule, regulating search, seizure, and
89 the issuance and execution of search warrants in circum-
90 stances for which special provision is made. The term
91 "property" is used in this rule to include documents, books,
92 papers and any other tangible objects.

1 Rule 44. Criminal Contempt.

2 (a) Summary Disposition. A criminal con-
3 tempt may be punished summarily if the judge
4 certifies that he saw or heard the conduct
5 constituting the contempt and that it was com-
6 mitted in the actual presence of the court.
7 The order of contempt shall recite the facts
8 and shall be signed by the judge and entered
9 of record.

10 (b) Disposition upon Notice and Hearing. A
11 criminal contempt except as provided in subdivision
12 (a) of this rule shall be prosecuted on notice. The
13 notice shall state the time and place of hearing,
14 allowing a reasonable time for the preparation of
15 the defense, and shall state the essential facts con-
16 stituting the criminal contempt charged and de-
17 scribe it as such. The notice shall be given orally
18 by the judge in open court in the presence of the
19 defendant or, on application of the United States
20 attorney or of an attorney appointed by the court
21 for that purpose, by an order to show cause or an
22 order of arrest. The defendant is entitled to a
23 trial by jury in any case in which an act of Con-
24 gress so provides. He is entitled to admission to
25 bail as provided in these rules. If the contempt

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26 charged involves disrespect to or criticism of a judge,
27 that judge is disqualified from presiding at the trial
28 or hearing except with the defendant's consent. Upon
29 a verdict or finding of guilt the court shall enter an
30 order fixing the punishment.

X. GENERAL PROVISIONS

1 Rule 45. Presence of the Defendant
2 shall be present at the arraignment, and
3 the trial including the impaneling of
4 return of the verdict, and at the impaneling
5 except as otherwise provided by these
6 offenses not punishable by death, the
7 absence after the trial has been commenced
8 presence shall not prevent continuing
9 including the return of the verdict.
10 appear by counsel for all purposes.
11 punishable by fine or by imprisonment
12 or both, the court, with the written consent
13 ant, may permit arraignment, plea, trial
14 of sentence in the defendant's absence
15 presence is not required at a reduction of
16 under Rule 37.

X. GENERAL PROVISIONS

1 Rule 45. Presence of the Defendant. The defendant
2 shall be present at the arraignment, at every stage of
3 the trial including the impaneling of the jury and the
4 return of the verdict, and at the imposition of sentence,
5 except as otherwise provided by these rules. In prosecutions for
6 offenses not punishable by death, the defendant's voluntary
7 absence after the trial has been commenced in his
8 presence shall not prevent continuing the trial to and
9 including the return of the verdict. A corporation may
10 appear by counsel for all purposes. In prosecutions for offenses
11 punishable by fine or by imprisonment for not more than one year
12 or both, the court, with the written consent of the defend-
13 ant, may permit arraignment, plea, trial and imposition
14 of sentence in the defendant's absence. The defendant's
15 presence is not required at a reduction of sentence
16 under Rule 37.

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1 Rule 46. Assignment of Counsel. If the de-
2 fendant appears in court without counsel, the
3 court shall advise him of his right to counsel and
4 assign counsel to represent him at every stage of
5 the proceeding unless he elects to proceed without
6 counsel or is able to obtain counsel.

1 Rule 47. Time.

2 (a) Computation. In computing any period
3 of time the day of the act or event after which
4 the designated period of time begins to run is not
5 to be included. The last day of the period so com-
6 puted is to be included, unless it is a Sunday or
7 legal holiday, in which event the period runs un-
8 til the end of the next day which is neither a Sun-
9 day nor a holiday. When a period of time pre-
10 scribed or allowed is less than 7 days, interme-
11 diate Sundays and holidays shall be excluded in
12 the computation. A half holiday shall be consid-
13 ered as other days and not as a holiday.

14 (b) Enlargement. When an act is required or
15 allowed to be done at or within a specified time,
16 the court for cause shown may at any time in its
17 discretion (1) with or without motion or notice,
18 order the period enlarged if application therefor
19 is made before the expiration of the period orig-
20 inally prescribed or as extended by a previous
21 order or (2) upon motion permit the act to be
22 done after the expiration of the specified period
23 if the failure to act was the result of excusable
24 neglect; but the court may not enlarge the period
25 for taking any action under Rules 35, 36 and 37,
26 except as otherwise provided in those rules, or, the
27 period for taking an appeal.

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28 (c) Unaffected by Expiration of Term. The period of
29 time provided for the doing of any act or the taking of any
30 proceeding is not affected or limited by the expiration of
31 a term of court. The expiration of a term of court in no
32 way affects the power of a court to do any act in a criminal
33 proceeding.

34 (d) For Motions; Affidavits. A written motion, other
35 than one which may be heard ex parte, and notice of the
36 hearing thereof shall be served not later than 5 days before
37 the time specified for the hearing unless a different period
38 is fixed by rule or order of the court. For cause shown such
39 an order may be made on ex parte application. When a motion
40 is supported by affidavit, the affidavit shall be served
41 with the motion; and opposing affidavits may be served not
42 less than 1 day before the hearing unless the court permits
43 them to be served at a later time.

44 (e) Additional Time after Service by Mail. Whenever a
45 party has the right or is required to do an act within a
46 prescribed period after the service of a notice or other
47 paper upon him and the notice or other paper is served
48 upon him by mail, 3 days shall be added to the prescribed
49 period.

1 Rule 48. Bail.

2 (a) Right to Bail.

3 (1) Before Conviction. A person arrested
4 for an offense not punishable by death shall
5 be admitted to bail. A person arrested for
6 an offense punishable by death may be admit-
7 ted to bail by any court or judge authorized
8 by law to do so in the exercise of discretion,
9 giving due weight to the evidence and to the
10 nature and circumstances of the offense.

11 (2) Upon Review. Bail shall be allowed
12 pending appeal or certiorari only if it appears
13 that the case involves a substantial question
14 which should be determined by the appellate
15 court. Bail may be allowed by the trial judge
16 or by the appellate court, or, if the appellate
17 court is not in session, by any judge thereof
18 or by the circuit justice. The court or
19 the judge or justice allowing bail may at any
20 time revoke the order admitting the defendant
21 to bail.

22 (b) Bail for Witness. If it appears by affi-
23 davit that the testimony of a person is material
24 in any criminal proceeding and if it is shown
25 that it may become impracticable to secure his

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26 presence by subpoena, the court or commissioner may re-
27 quire him to give bail for his appearance as a witness,
28 in an amount fixed by the court or commissioner. If the
29 person fails to give bail the court or commissioner may
30 commit him to the custody of the marshal pending final
31 disposition of the proceeding in which the testimony is
32 needed, may order his release if he has been detained for
33 an unreasonable length of time, and may modify at any time
34 the requirement as to bail.

35 (c) Amount. If the defendant is admitted to bail, the
36 amount thereof shall be such as in the judgment of the com-
37 missioner or court or judge or justice will insure the presence
38 of the defendant, having regard to the nature and circumstances
39 of the offense charged, the weight of the evidence against
40 him, the financial ability of the defendant to give bail, and
41 the character of the defendant.

42 (d) Form, and Place of Deposit. A person required or
43 permitted to give bail shall execute a bond for his appearance.
44 One or more sureties may be required, cash or bonds or notes
45 of the United States may be accepted and in proper cases no
46 security need be required. Bail given originally on appeal
47 shall be deposited in the registry of the district court
48 from which the appeal is taken.

49 (e) Justification of Sureties. Every surety, except a
50 corporate surety which is approved as provided by law, shall

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51 justify by affidavit and may be required to describe in
52 the affidavit the property by which he proposes to justify
53 and the encumbrances thereon, the number and amount of
54 other bonds and undertakings for bail entered into by him
55 and remaining undischarged and all his other liabilities.
56 No bond shall be approved unless the surety thereon appears
57 to be qualified.

58 (f) Forfeiture.

59 (1) Declaration. If there is a breach of condition
60 of a bond, the district court shall declare a forfeiture
61 of the bail.

62 (2) Setting Aside. The court may direct that a for-
63 feiture be set aside, upon such conditions as the court
64 may impose, if it appears that justice does not require
65 the enforcement of the forfeiture.

66 (3) Enforcement. When a forfeiture has not been set
67 aside, the court shall on motion enter a judgment of
68 default and execution may issue thereon. By entering
69 into a bond the obligors submit to the jurisdiction of
70 the district court and irrevocably appoint the clerk of
71 the court as their agent upon whom any papers affecting
72 their liability may be served. Their liability may be
73 enforced on motion without the necessity of an independ-
74 ent action. The motion and such notice of the motion as

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75 the court prescribes may be served on the clerk of the
76 court, who shall forthwith mail copies to the obligors to
77 their last known addresses.

78 (4) Remission. After entry of such judgment, the
79 court may remit it in whole or in part under the condi-
80 tions applying to the setting aside of forfeiture in
81 Paragraph (2) of this subdivision.

82 (g) Exoneration. When the condition of the bond has
83 been satisfied or the forfeiture thereof has been set aside
84 or remitted, the court shall exonerate the obligors and
85 release any bail. A surety may be exonerated by a deposit
86 of cash in the amount of the bond or by a timely surrender
87 of the defendant into custody.

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1 Rule 49. Motions. An application to the court
2 for an order shall be by motion. A motion
3 other than one made during a trial or hearing
4 shall be in writing unless the court permits it
5 to be made orally. It shall state the grounds
6 upon which it is made and shall set forth the
7 relief or order sought. It may be supported by
8 affidavit.

1 Rule 50. Dismissal.

2 (a) By Attorney for Government. The Attorney General
3 or the United States attorney may file a dismissal of an
4 indictment, information, or complaint with a statement of
5 the reasons therefor and the prosecution shall thereupon
6 terminate. Such a dismissal may not be filed during the
7 trial without the consent of the defendant.

8 (b) By Court. If there is unnecessary delay in
9 presenting the charge to a grand jury or in filing an
10 information against a defendant who has been held to
11 answer to the district court, or if there is unnecessary
12 delay in bringing a defendant to trial, the court may
13 dismiss the indictment, information or complaint.

1 Rule 51. Service and Filing of Papers.

2 (a) Service: When Required. Written mo-
3 tions other than those which are heard ex parte,
4 written notices, designations of record on appeal
5 and similar papers shall be served upon the ad-
6 verse parties.

7 (b) Service: How Made. Whenever under
8 these rules or by an order of the court service is
9 required or permitted to be made upon a party
10 represented by an attorney, the service shall be
11 made upon the attorney unless service upon the
12 party himself is ordered by the court. Service
13 upon the attorney or upon a party shall be made
14 in the manner provided in civil actions.

15 (c) Notice of Orders. Immediately upon the
16 entry of an order made on a written motion
17 subsequent to arraignment the clerk shall mail
18 to each party affected thereby a notice thereof
19 and shall make a note in the docket of the
20 mailing.

21 (d) Filing. Papers required to be served shall
22 be filed with the court. Papers shall be filed in
23 the manner provided in civil actions.

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1 Rule 52. Communications by Counsel to Judge.
2 Copies of all communications, memoranda and
3 briefs submitted by counsel to a judge and relat-
4 ing to a proceeding pending before him shall be
5 delivered simultaneously to counsel for adverse
6 parties. Counsel shall not confer with a judge
7 regarding the merits of a proceeding pending
8 before him, except in the presence of or with the
9 consent of counsel for adverse parties. This rule
10 shall not apply to applications for orders
11 which may be made ex parte.

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- 1 Rule 53. Calendars. The district courts may
- 2 provide for placing criminal proceedings upon
- 3 appropriate calendars. Preference shall be given
- 4 to criminal proceedings as far as practicable.

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1 Rule 54. Exceptions Unnecessary. Exceptions
2 to rulings or orders of the court are unnecessary
3 and for all purposes for which an exception has
4 heretofore been necessary it is sufficient that a
5 party, at the time the ruling or order of the court
6 is made or sought, makes known to the court
7 the action which he desires the court to take or
8 his objection to the action of the court and the
9 grounds therefor; but if a party has no oppor-
10 tunity to object to a ruling or order, the absence
11 of an objection does not thereafter prejudice him.

1 Rule 55. Harmless Error and Plain Error.

2 (a) Harmless Error. Any error, defect, ir-
3 regularity or variance which does not affect sub-
4 stantial rights shall be disregarded.

5 (b) Plain Error. Plain errors or defects af-
6 fecting substantial rights may be noticed al-
7 though they were not brought to the attention of
8 the court.

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- 1 Rule 56. Regulation of Conduct in the Court Room. The
2 taking of photographs in the court room during the progress
3 of judicial proceedings or radio broadcasting of judicial
4 proceedings from the court room shall not be permitted by
5 the court.

1 Rule 57. Application and Exception.

2 (a) Courts and Commissioners.

3 (1) Courts. These rules apply to all crim-
4 inal proceedings in the district courts of the
5 United States, which include the District
6 Court of the United States for the District
7 of Columbia, the District Court for the Terri-
8 tory of Alaska, the United States District
9 Court for the Territory of Hawaii, the Dis-
10 trict Court of the United States for Puerto
11 Rico and the District Court of the Virgin
12 Islands; in the United States circuit courts
13 of appeals, which include the United States
14 Court of Appeals for the District of Columbia;
15 and in the Supreme Court of the United States.
16 The rules governing proceedings after verdict
17 or finding of guilt or plea of guilty apply
18 in the United States District Court for the
19 District of the Canal Zone.

20 (2) Commissioners. The rules applicable
21 to criminal proceedings before ~~commissioners~~
22 apply to similar proceedings before
23 judges of the United States or of the District
24 of Columbia. They do not apply to criminal

Handwritten note:
List of
new courts
to be added
to the list

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25 proceedings before other officers empowered to com-
26 mit persons charged with offenses against the United
27 States.

28 (b) Proceedings.

29 (1) Removed Proceedings. These rules apply to
30 criminal prosecutions removed to the district courts
31 of the United States from state courts and govern all
32 procedure after removal, except that dismissal by the
33 attorney for the prosecution shall be governed by
34 state law.

35 (2) Offenses Outside a District or State.

36 These rules apply to proceedings for offenses com-
37 mitted upon the high seas or elsewhere out of the
38 jurisdiction of any particular state or district,
39 except that such proceedings may be had in any dis-
40 trict authorized by the Act of March 3, 1911, c. 231,
41 s 41, 36 Stat. 1100, Judicial Code s 41, 28 U.S.C.
42 s 102.

43 (3) Peace Bonds. These rules do not alter the
44 power of judges of the United States or of United
45 States commissioners to hold to security of the
46 peace and for good behavior under the Act of March
47 3, 1911, c. 231, s 270, 36 Stat. 1163, Judicial
48 Code s 270, 28 U.S.C. s 392, and under Revised Statutes

Rule 57, Page 3

49 s 4069, 50 U. S. C. s 23, but in such cases the pro-
50 cedure shall conform to these rules so far as they
51 are applicable.

52 (4) Trials before Commissioners. These rules
53 do not apply to proceedings before United States
54 commissioners and in the district courts under the
55 Act of October 9, 1940, c. 785, 54 Stat. 1058-1059,
56 18 U. S. C. ss 576-576d, relating to petty offenses
57 on federal reservations.

58 (5) Other Proceedings. These rules are not
59 applicable to extradition and rendition of fugitives;
60 forfeiture of property for violation of a statute
61 of the United States; or the collection of fines and
62 penalties. They do not apply to proceedings under
63 the Federal Juvenile Delinquency Act so far as they
64 are inconsistent with that Act. They do not apply
65 to summary trials for offenses against the navigation
66 laws under Revised Statutes ss 4300-4305, 33 U. S. C.
67 ss 391-396, or to proceedings involving disputes
68 between seamen under Revised Statutes ss 4079-4081
69 as amended, 22 U. S. C. ss 256-258, or to proceedings
70 for fishery offenses under the Act of June 28, 1937,
71 c. 392, 50 Stat. 325-327, 16 U. S. C. ss 772-772i, or
72 to proceedings against a witness in a foreign country

Rule 57, Page 4

73 under the Act of July 3, 1926, c. 762, 44 Stat. 835,
74 26 U. S. C. ss 711-718.

75 (c) Application of Terms. As used in these rules
76 the term "State" includes District of Columbia, territory
77 and insular possession. "Law" includes statutes and judicial
78 decisions. "Act of Congress" includes any act of Congress
79 locally applicable to and in force in the District of
80 Columbia, in a territory or in an insular possession. "Dis-
81 trict court" includes all district courts named in subdivision
82 (a), paragraph (1) of this rule. "Civil action" refers to a
83 civil action in a district court. "Oath" includes affirmations.
84 "District judge" includes a justice of the District Court
85 of the United States for the District of Columbia. "Senior
86 district judge" includes the chief justice of the District
87 Court of the United States for the District of Columbia.
88 "Judge of a circuit court of appeals" includes a jus-
89 tice of the United States Court of Appeals for the
90 District of Columbia. "Senior circuit judge" includes
91 the chief justice of the United States Court of
92 Appeals for the District of Columbia. "Attorney
93 for the government" means the attorney general, an
94 authorized assistant of the attorney general, a
95 United States attorney and an authorized assis-
96 tant of a United States Attorney. The words

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97 "demurrer," "motion to quash," "plea in abate-
98 ment," "plea in bar" and "special plea in bar,"
99 or words to the same effect, in any act of Congress
100 shall be construed to mean the motion raising a de-
101 fense or objection provided in Rule 12.

1 Rule 38. Records. The clerk of the district
2 court and each United States Commissioner shall
3 keep such records in criminal proceedings as the
4 Director of the Administrative Office of the
5 United States Courts, with the approval of the
6 Judicial Conference of Senior Circuit Judges,
7 may prescribe.

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1 Rule 59. Courts and Clerks. The circuit court
2 of appeals and the district court shall be deemed
3 always open for the purpose of filing any proper
4 paper, of issuing and returning process and of
5 making motions and orders. The clerk's office
6 with the clerk or a deputy in attendance shall be
7 open during business hours on all days except
8 Sundays and legal holidays.

1 Rule 60. Rules of Court.

2 (a) Rules by District Courts and Circuit

3 Courts of Appeals. Rules made by district courts
4 and circuit courts of appeals for the conduct of
5 criminal proceedings shall not be inconsistent
6 with these rules. Copies of all rules made by a
7 district court or by a circuit court of appeals
8 shall upon their promulgation be furnished to the
9 Administrative Office of the United States
10 Courts. The clerk of each court shall make ap-
11 propriate arrangements, subject to the approval
12 of the Director of the Administrative Office of
13 the United States Courts, to the end that all rules
14 made as provided herein be published promptly
15 and that copies of them be available to the public.

16 (b) Procedure Not Otherwise Specified. If
17 no procedure is specifically prescribed by rule, the
18 court may proceed in any lawful manner not in-
19 consistent with these rules or with any applicable
20 statute.

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- 1 Rule 61. Forms. The forms contained in the
- 2 Appendix of Forms are illustrative and not
- 3 mandatory.

Federal Rules of Criminal Procedure
Report, June 1944

1 Rule 62. Effective Date. These rules take ef-
2 fect on the day which is 3 months subsequent to
3 the adjournment of the -----regular session
4 of the --th Congress, but if that day is prior to
5 -----, 1945, then they take effect on
6 -----, 1945. They govern all criminal
7 proceedings thereafter commenced and so far as
8 just and practicable all proceedings then pending.

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Report, June 1944

- 1 Rule 63. Title. These rules may be known and
- 2 cited as the Federal Rules of Criminal Pro-
- 3 cedure.

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APPENDIX OF FORMS

Table of Forms

Form

1. Indictment for Murder in the First Degree of Federal Officer
2. Indictment for Murder in the First Degree on Federal Reservation
3. Indictment for Mail Fraud
4. Indictment for Sabotage
5. Indictment for Internal Revenue Violation
6. Information for Food and Drug Violation
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Suppression of Evidence
12. Appearance Bond
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21. Notice of Appeal
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Form 2. Indictment for Murder in the First Degree
on Federal Reservation

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,

DIVISION

United States of America)	
)	No. _____
v.)	
)	(18 U. S. C. ss 451, 452)
John Doe)	

The grand jury charges:

On or about the _____ day of _____, 19____, in the
_____ District of _____, and on lands acquired for
the use of the United States and under the (exclusive) (concurrent)
jurisdiction of the United States, John Doe with premeditation
shot and murdered John Roe.

A True Bill.

Foreman.

United States Attorney.

Form 3. Indictment for Mail Fraud

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DIVISION OF _____,

_____ DIVISION

United States of America)

v.)

John Doe et al.)

No. _____

(Criminal Code s 215,
18 U. S. C. s 338)

The grand jury charges:

1. Prior to the _____ day of _____, 19 __,
and continuing to the _____ day of _____, 19 __¹, the
defendants John Doe, Richard Roe, John Stiles and Richard
Miles devised and intended to devise a scheme and artifice
to defraud purchasers of stock of XY Company, a California
corporation, and to obtain money and property by means of the
following false and fraudulent pretenses, representations and
promises, well knowing at the time that the said pretenses,
representations and promises would be false when made: That
the XY Company owned a mine at or near San Bernardino,
California; that the mine was in actual operation; that
gold ore was being obtained at the mine and sold at a profit;
that the current earnings of the company would be sufficient
to pay dividends on its stock at the rate of six per cent per
annum.

2. On the _____ day of _____, 19__, in the _____ District of _____, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Mrs. Mary Brown, 110 Main Street, Stockton, California, to be sent or delivered by the Post Office Establishment of the United States.

Second Count

1. The Grand Jury realleges all of the allegations of the first count of this indictment, except those contained in the last paragraph thereof,

2. On the _____ day of _____, 19__, in the _____ District of _____, the defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Mr. John J. Jones, 220 First Street, Batavia, New York, to be sent or delivered by the Post Office Establishment of the United States.

A True Bill.

Foreman.

United States Attorney.

1. Insert last mailing date alleged.

Federal Rules of Criminal Procedure
Report, June 1944

Form 4. Indictment for Sabotage

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,

 DIVISION

United States of America)
)
 v.)
)
 John Doe)

No. _____
(50 U. S. C. § 103)

The grand jury charge:

On or about the _____, of _____, 19____, within the _____ District of _____, while the United States was at war, John Doe, with reason to believe that his act might injure, interfere with or obstruct the United States in preparing for or carrying on the war, wilfully made and caused to be made in a defective manner certain war material consisting of shells, in that he placed and caused to be placed certain material in a cavity of the shells so as to make them appear to be solid metal, whereas in fact the shells were hollow.

A True Bill.

Foreman.

United States Attorney.

Federal Rules of Criminal Procedure
Report, June 1944

Form 5. Indictment for Internal Revenue Violation

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,

_____ DIVISION

United States of America)

v.)

John Doe)

No. _____

(26 U. S. C. s 2833)

The grand jury charges:

On or about the _____ day of _____, 19____, in the
_____ District of _____, John Doe carried on the
business of a distiller without having given bond as required
by law.

A True Bill.

_____,
Foreman.

_____,
United States Attorney.

Federal Rules of Criminal Procedure
Report, June 1944

Form 6. Information for Food and Drug Violation

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,

_____ DIVISION

United States of America)

v.)

John Doe)

No. _____

(21 U. S. C. ss 331, 333, 342)

The United States Attorney charges:

On or about the _____ day of _____, 19____, in
the _____ District of _____, John Doe unlawfully
caused to be introduced into interstate commerce by delivery
for shipment from the city¹ of _____, _____ (State),
to the city¹ of _____, _____ (State), a consignment of
cans containing articles of food which were adulterated in
that they consisted in whole or in part of decomposed
vegetable substance.

United States Attorney.

¹_____
Name of city is stated only to preclude a motion for a
bill of particulars and not because such a statement is an
essential fact to be alleged.

THE UNIVERSITY OF CHICAGO

—

FOR THE _____ DISTRICT OF _____
DIVISION

)
) No. _____
)
)
)

1

Clerk.

Deputy Clerk.

1 Insert designation of officer to whom warrant is issued, e.g.,
"any United States Marshal or any other authorized officer";
or "United States Marshal for _____ District of _____";
or "any United States Marshal"; or "any Special Agent of the
Federal Bureau of Investigation"; or "any United States Marshal
or any Special Agent of the Federal Bureau of Investigation";
or "any agent of the Alcohol Tax Unit."

Federal Rules of Criminal Procedure
Report, June 1964

Form 8. Summons

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,
 _____ DIVISION

United States of America)
)
 v.) No. _____
)
 John Doe)

To John Doe:

You are hereby summoned to appear before the District Court for the District of _____ at the Post Office Building in the city of _____ on the _____ day of _____, 19__ at 10 o'clock A. M. to answer to an information charging you with unlawful transportation of intoxicating liquor on which the internal revenue tax had not been paid.

Clerk.

By _____
Deputy Clerk.

This summons was received by me at _____
on _____.

Defendant.

Federal Rules of Criminal Procedure
Revised, June 1944

Form 9. Warrant of Removal

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,
_____ DIVISION

To _____:

The grand jury of the United States for the
_____ District of _____ having indicted John
Doe on a charge of murder in the first degree and John
Doe having been arrested in this District and, after
(waiving) hearing, having been committed by a United States
Commissioner to your custody pending his removal to that
district,

You are hereby commanded to remove the said
John Doe forthwith to the _____ District of
_____ and there deliver him to the United States
Marshal for that District or to some other officer author-
ized to receive him.

United States District Judge.

Dated at _____ this _____ day of _____ 19 ____

Federal Rules of Criminal Procedure
Report. June 1944

Form 10. Search Warrant (Under 18 U. S. C. s 287)

To: _____:

Affidavit having been made before me by John Doe that
he has reason to believe that on the premises known as
_____ Street, in the city of _____,
in the District of _____, there is now being concealed
certain property, namely, certain dies, hubs, molds and plates,
fitted and intended to be used for the manufacture of counter-
feit coins of the United States, and as I am satisfied that there
is probable cause to believe that the property so fitted and in-
tended to be used is being concealed on the premises above de-
scribed,

You are hereby commanded to search the place named
for the property specified, serving this warrant and making
the search in the daytime, and if the property be found there
to seize it, prepare a written inventory of the property seized
and bring the property before me.

Dated this _____ day of _____.

U. S. Commissioner for the _____

District of _____.

Federal Rules of Criminal Procedure
Report, June 1944

Form 11. Motion for the Return of Seized Property and the
Suppression of Evidence

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,
_____ DIVISION

No. _____

John Doe hereby moves this Court to direct that certain property of which he is the owner, a schedule of which is annexed hereto, and which on the night of _____, 19__, at the premises known as _____ Street, in the city of _____, in the District of _____, was unlawfully seized and taken from him by two deputies of the United States Marshal for this District, whose true names are unknown to the petitioner, be returned to him and that it be suppressed as evidence against him in any criminal proceeding.

The petitioner further states that the property was seized against his will and without a search warrant.

Attorney for Petitioner.

Form 12. Appearance Bond

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,
_____ DIVISION

We, the undersigned, jointly and severally acknowledge
that we and our personal representatives are bound to pay to
the United States of America the sum of _____ Dollars
(\$_____).

The condition of this bond is that the defendant
_____ is to appear in the District Court of
_____ ¹
the United States for the _____ District of _____
at _____ ²
in accordance with all orders and directions of
the Court relating to the appearance of the defendant before
_____ ³
the Court in the case of United States v. _____,
File number _____; and if the defendant appears as
ordered, then this bond is to be void, but if the defendant
fails to perform this condition payment of the amount of the
bond shall be due forthwith. If the bond is forfeited and if
the forfeiture is not set aside or remitted, judgment may be
entered upon motion in the District Court of the United States
for the _____ District of _____ against each debtor
jointly and severally for the amount above stated together

¹
If appearance is to be before a commissioner, change the words
following "appear" to "before _____, United States Commissioner."

²
Insert place.

³Change "Court" to "Commissioner" if necessary. See Note 1.

with interest and costs, and execution may be issued or payment secured as provided by the Federal Rules of Criminal Procedure and by other laws of the United States.

This bond is signed on this _____ day of _____,
19__ at _____.

Name of Defendant. Address.

Name of Surety. Address.

Name of Surety. Address.

Signed and acknowledged before me this _____
day of _____, 19__.

Approved: _____.

Justification of Sureties

I, the undersigned surety, on oath say that I reside
at _____; and that my net worth is the sum of
_____ Dollars (\$_____).

I further say that _____

_____ 4

Surety.

Sworn to and subscribed before me this _____ day of

_____, 19__ at _____.

_____.

These lines are to provide for additional justification if
the Commissioner or Court so directs.

Federal Rules of Criminal Procedure
Report, June 1944

Form 13. Waiver of Indictment

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,

DIVISION

United States of America)	No. _____
)	
v.)	
)	(18 U. S. C. s 408)
John Doe)	

John Doe, the above named defendant, who is accused of violating the National Motor Vehicle Theft Act, being advised of the nature of the charge and of his rights, hereby waives in open court prosecution by indictment and consents that the proceeding may be by information instead of by indictment.

Defendant.

Witness.

Counsel for Defendant.

Federal Rules of Criminal Procedure
Report, June 1944

Form 14. Motion by Defendant to Dismiss the Indictment

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,

_____ DIVISION

United States of America)

v.)

John Doe)

No. _____

The defendant moves that the indictment be dismissed on the following grounds:

1. The court is without jurisdiction because the offense if any is cognizable only in the _____ Division of the _____ District of _____.

2. The indictment does not state facts sufficient to constitute an offense against the United States.

3. The defendant has been acquitted (convicted, in jeopardy of conviction) of the offense charged therein in the case of United States v. _____ in the District Court for the _____ District of _____, Case No. _____ terminated on _____.

4. The offense charged is the same offense for which the defendant was pardoned by the President of the United States on _____ day of _____, 19__.

5. The indictment was not found within three years next after the alleged offense was committed.

(Signed) _____

Attorney:

Federal Rules of Criminal Procedure
Report, June 1944

Form 15. Subpoena to Testify

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,
_____ DIVISION

To _____:

You are hereby commanded to appear in the District Court of
the United States for the _____ District of _____ at the
Courthouse, in the city of _____, on the ____ day of _____,
19__ at 10 o'clock A. M. to testify in the case of United States
v. John Doe.

This subpoena is issued on application of the (United States)
(defendant).

Clerk.

By _____
Deputy Clerk.

Federal Rules of Criminal Procedure
Report, June 1944

Form 16. Subpoena to Produce Document
or Object

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____
_____ DIVISION

To _____:

You are hereby commanded to appear in the District Court of
the United States for the _____ District of _____ at
the Courthouse, in the city of _____, on the _____ day of
_____, 19__ at 10 o'clock A. M. to testify in the case of
United States v. John Doe and bring with you _____

This subpoena is issued upon application of the (United
States) (defendant).

Clerk.

By _____
Deputy Clerk.

Federal Rules of Criminal Procedure
Report, June 1944

Form 17. Warrant for Arrest of Witness

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,
_____ DIVISION

v. _____

No. _____

To _____:

You are hereby commanded to arrest John Doe and bring him forthwith before the District Court for the _____ District of _____ in the city of _____, for the reason that he wilfully failed to appear after having been served with subpoena to appear at the trial of the case of United States v. Roe on the _____ day of _____, 19____.

You are further commanded to detain him in your custody until he is discharged by the Court.

Upon order of Honorable _____, United States District Judge at _____ this _____ day of _____, 19____.

Clerk.

By _____,
Deputy Clerk.

Federal Rules of Criminal Procedure
Report, June 1944

Form 18. Motion for New Trial

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,

DIVISION

United States of America)	No. _____
)	
v.)	
John Doe)	

The defendant moves the court to grant him a new trial
for the following reasons:

1. The court erred in denying defendant's motion for acquittal made at the conclusion of the evidence.
2. The verdict is contrary to the weight of the evidence.
3. The verdict is not supported by substantial evidence.
4. The court erred in sustaining objections to questions addressed to the witness Richard Roe.
5. The court erred in admitting testimony of the witness Richard Roe to which objections were made.
6. The court erred in charging the jury and in refusing to charge the jury as requested.
7. The defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances: the attorney for the government stated in his argument that the defendant had not taken the witness stand and that the defendant had been convicted of crime.
8. The court erred in denying the defendant's motion for a mistrial.

Attorney for Defendant.

Federal Rules of Criminal Procedure
Report, June 1944

Form 19. Motion in Arrest of Judgment

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,

_____ DIVISION

United States of America)	
)	No. _____
v.)	
)	
John Doe)	

The defendant moves the court to arrest the judgment for
the following reasons:

1. The indictment does not state facts sufficient to
constitute an offense against the United States.
2. This court is without jurisdiction of the offense, in
that the offense if any was not committed in this district.

Attorney for Defendant.

Form 20. Judgment and Commitment

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,

_____ DIVISION

United States of America)

v.)

No. _____

JUDGMENT AND COMMITMENT

On this _____ day of _____, 19____, ¹ came the attorney for the government and the defendant appeared in person and _____

It is Adjudged that the defendant has been convicted upon his ² plea of _____ of the offense of _____ ³ as charged _____;

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is Adjudged that the defendant is guilty as charged and convicted.

¹
Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

²
Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

³
Insert "in count (s) number _____" if required.